

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

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MIDNIGHT MADNESS DISTILLING, LLC,

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**Case No. 21-11750-MDC
Chapter 11**

Debtor.

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**MOTION OF MILLSTONE SPIRITS GROUP, LLC FOR ORDER
AUTHORIZING CHAPTER 7 TRUSTEE TO TURNOVER PROCEEDS OF
CERTAIN ACCOUNTS RECEIVABLE SOLD PURSUANT TO SALE ORDER**

Millstone Spirits Group, LLC (“Millstone”), by and through its undersigned counsel, hereby files this motion for an order authorizing Bonnie Finkel, Chapter 7 Trustee (the “Trustee”) to turnover to Millstone the proceeds from certain accounts receivable which Midnight Madness Distilling, LLC (the “Debtor”) sold to Millstone pursuant to the Sale Order approving the sale of substantially all of the assets of the Debtor to Millstone.

The Trustee is currently holding \$79,783.25, which are proceeds from certain accounts receivable that Millstone purchased from the Debtor. The Trustee has expressed concern that she may not remit those funds to Millstone without further order from this Court. Accordingly, in support of its motion, Millstone respectfully states as follows:

I. BACKGROUND

1. On September 17, 2021, this Court approved the sale of substantially all of the Debtor’s assets to Millstone, via entry of the *Order: (1) Approving Asset Purchase Agreement Among the Debtor and the Buyer, (2) Approving Sale of Substantially All Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests Pursuant to Bankruptcy Code Sections 105, 363(B), (F) And (M), (3) Approving Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases Free and Clear of All Liens, Claims, Encumbrances and Other*

Interests Pursuant to Bankruptcy Code Sections 363 and 365, (4) Determining the Amounts Necessary to Cure Such Executory Contracts and Unexpired Leases, and Granting Related Relief (Dkt. No. 178; “Sale Order”).

2. The Sale Order approves the sale of all Purchased Assets, which included, among other things, “all accounts receivable held by Seller.” See Asset Purchase Agreement § 1.01(b).

3. The sale was consummated on September 30, 2021. Shortly before the sale closed, on September 15, 2021 the Debtor issued an invoice to Onda in the amount of \$79,783.25 (the “Onda Receivable”). A true and correct copy of the September 15, 2021 invoice is attached as **Exhibit A** hereto.

4. The Onda Receivable was part of the Purchased Assets that Millstone acquired through the approved sale.

5. On October 13, 2021, this case converted from a chapter 11 to a case under chapter 7 of the Bankruptcy Code. That same day, Onda sent a wire payment in the amount of \$79,783.25 to the Debtor’s DIP Account at PNC, which was the account that Onda still had on record associated with the accounts receivable. That payment was received by PNC on October 18, 2021. A true and correct copy of Onda’s payment confirmation is attached as **Exhibit B** hereto.

6. Counsel for PNC has confirmed that a wire transfer for \$79,783.25 posted to the DIP Account from Que Onda Beverage on October 18, 2021. See email string dated December 29, 2021 attached as **Exhibit C** hereto.

7. At some point thereafter, all of the funds in the DIP Account, including the funds paid on account of the Onda Receivable, were transferred to the control of the Trustee.

8. The funds should have been paid by Onda directly to Millstone, as they were part of the Purchased Assets.

9. Because this case has converted to a Chapter 7, the Trustee has indicated she cannot release the \$79,783.25 to Millstone without approval of this Court. Accordingly, Millstone respectfully requests that the Court enter an order finding that Millstone is entitled to payment of the \$79,783.25, and authorizing the Trustee to transfer those funds to Millstone.

10. Notice of this Motion has been served upon: (i) counsel to the Trustee; (ii) the Office of the U.S. Trustee; (iii) counsel to the Debtor; (iv) counsel to PNC Bank; (v) creditors appearing on Debtor's filed Schedule D; (vi) creditors appearing on the Debtor's filed list of creditors holding the 20 largest unsecured claims; and (vii) parties appearing on the Clerk's service list, including all parties in interest having requested notices pursuant to Bankruptcy Rule 2002 (collectively the "Notice Parties"), by U.S. First class mail. Millstone submits that such notices is appropriate and sufficient given the relief requested.

WHEREFORE, Millstone Spirits Group, LLC, respectfully requests that this Court enter an Order, substantially in the form submitted herewith, authorizing the Trustee to pay the Onda Receivable to Millstone.

DATE: April 14, 2022

Respectfully submitted:

/s/ Joel L. Perrell Jr.

Joel L. Perrell Jr

PA Bar No. 204803

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Admitted Pro Hac Vice

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Upon consideration of the motion of Millstone Spirits Group, LLC (“Millstone”) for an order authorizing Bonnie B. Finkel, the Chapter 7 Trustee in the above-captioned case, to turnover to Millstone the proceeds of certain accounts receivable (the “Motion”)¹; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334, and that this matter is a core matter pursuant to 28 U.S.C. § 157; and it appearing that due notice of the Motion has been given to the Notice Parties and that no further notice need be given; and sufficient cause appearing therefor, it is hereby Ordered that

1. The Motion is GRANTED;

¹ Capitalized terms shall have the meanings set forth in the Motion unless otherwise defined herein.

2. The Trustee is hereby authorized to pay the proceeds of the Onda Receivable in the amount of \$79,783.25 to Millstone.

Dated: _____, 2022

BY THE COURT:

MAGDELINE D. COLEMAN
CHIEF U.S. BANKRUPTCY JUDGE

END OF ORDER